

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7954 OF 2004

Shantabai Bhairu Gurav	.. Petitioner.
Vs.	
Smt.Sindhutai Janakrao @ Laxman Nalage and Ors.	.. Respondents.

Mr.S.S.Patwardhan for the petitioner.

CORAM : D.B.BHOSALE, J.

DATED : 25TH FEBRUARY, 2005

ORAL ORDER:

. Heard Mr.Patwardhan, learned counsel for the petitioner.

2. This petition is directed against the order dated 22.6.2004 passed below Exhibit-63 filed in R.C.S.No.5600 of 1995 by which the respondent-defendant's application under Order 26 Rule 9 of the Code of Civil Procedure, seeking appointment of a Court Commissioner has been allowed. The operative part of the order reads thus:

"Application which is Exh.63 is granted and Adv. Shri G.T.Awate is appointed as C.C. to all the work mentioned in the application. Adv. of the defendant is directed to deposit amount of Rs.500/- (Rs.Five Hundred Only) as C.C. Ref. CC is directed to do the C.C. work after giving

notices to both the sides and submit the report on or before 1.7.2004".

3. It appears that in 1995 also a similar application was filed (Exhibit-26) by the respondents and that application was either not pressed or no orders therein were passed by the Court. It is clear from the impugned order that the Court Commissioner was directed to complete the commission work and submit his report on or before 1.7.2004. Mr. Patwardhan, learned counsel for the petitioner submitted that the respondents did not deposit the cost of the Court Commissioner and as a result of which he could not carry out the commission work. He further submitted that the trial is being delayed for want of compliance of the impugned order inasmuch as the trial Court is not proceeding with the trial.

4. From the perusal of the impugned order as also other material placed before me it is clear that application Exhibit-63 was filed by the respondents when the evidence of the plaintiff was being recorded. The examination-in-chief of the petitioner-plaintiff was just closed and at that stage the application under Order 26 Rule 9 of the Code of Civil Procedure was filed by the respondents. Since the order appointing a commissioner is a

judicial discretionary order this Court in its extremely limited jurisdiction under Article 227 of the Constitution of India is not expected to interfere with such order. However, in the present case, since the order dated 22.6.2004 has not been enforced by the respondents within the time stipulated by the order, in my opinion, nothing further survives in the petition. However, I observe that during the course of recording of oral evidence if such order is passed and if a party does not comply with it within the time stipulated, the Court is not expected to await the compliance of such order or wait for an application seeking extension of time is being made and thereby delay the trial. In such a situation, even if an application seeking extension of time is filed, the Court should not liberally condone the delay and/or extend the time for complying with the order unless it is satisfied that the party had sufficient cause for not making the application within reasonable time. The Court should see to it that non compliance of such orders do not hinder the progress of the trial. In the present case, it is desirable for the trial Court to complete the trial expeditiously without waiting for the defendants to comply with the order dated 22.6.2004. With these observations the writ petition is disposed of.

(D.B.Bhosale, J.)